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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY JOSEPH CUNNINGHAM,

Defendant and Appellant.

C063805

(Super. Ct. No.
093500)

Defendant Jeremy Joseph Cunningham, who had prior convictions for unlawful taking or driving of a motor vehicle, and an accomplice twice backed a stolen van into the windows of a Metro PCS store, stole a bill payment machine and fled. Officers saw the van and apprehended defendant and his accomplice.

Defendant entered a negotiated plea of no contest to unlawful taking of a vehicle and to second degree burglary, in exchange for a stipulated sentence of four years and dismissal of other counts and another case. The court sentenced him to the stipulated term in prison and imposed restitution fines of \$200 in accordance with

Penal Code sections 1202.4 and 1202.45; a \$60 criminal assessment fee; a \$60 security fee; and restitution in the amount of \$14,000 (\$7,000 to each of the two victims). Defendant was awarded 104 days of presentence custody credits and 52 days of conduct credits.

Defendant appealed, and we appointed counsel to represent him. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

We have undertaken an examination of the record and, other than an issue as to the amount of presentence credits to which defendant is entitled (discussed below), we find no arguable error that would result in a disposition more favorable to defendant.

DISCUSSION

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the claim that amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to him. We agree. (See *In re Estrada* (1965) 63 Cal.2d 740, 745; *People v. Doganiere* (1978) 86 Cal.App.3d 237, 239-240; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393.) Because he has not been convicted of a serious or violent felony and is not required to register as a sex offender (Pen. Code, §§ 4019, subds. (b)(2), (c)(2)), defendant is not among the prisoners excluded from receiving the increased rate of credits.

Appellant's counsel states she has sent a letter to the trial court requesting an award of additional presentence conduct credits, and the court referred the issue to the probation department.

DISPOSITION

The matter is remanded to the trial court with directions to specify, if it has not already done so, that defendant is entitled to the additional conduct credits provided by Penal Code section 4019, effective January 25, 2010, and to prepare an amended abstract of judgment reflecting the additional credits. In all other respects, the judgment is affirmed.

SCOTLAND, Acting P. J.*

We concur:

BLEASE, J.

NICHOLSON, J.

* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.